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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 109.

THE BUTTE CITY WATER COMPANY, PLAINTIFF IN ERROR,

vs.

BEN BAKER.

BRIEF OF PLAINTIFF IN ERROR ON MOTIONS TO DISMISS OR AFFIRM AND IN REPLY TO SUGGESTION OF DIMINUTION OF RECORD.

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Of Counsel.

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(19,056.)

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BEN BAKER, DEFENDANT IN ERROR.

BRIEF OF PLAINTIFF IN ERROR ON MOTION TO DISMISS OR AFFIRM.

The defendant in error moves to dismiss the writ of error issued in this cause:

1st. For the reason that no Federal question was presented to the supreme court of the State or passed upon by that court.

2d. For the reason that no Federal question is in fact involved.

We shall take these matters up in the order discussed in defendant's brief.

I.

Was the question now presented in this court presented and urged in the supreme court of the State?

The record in the State court, at page 36, shows that the plaintiff in error, after offering certain proof, offered in evidence a notice of location of the Keyno Lode claim. The notice of location is set forth in full. To the introduction of this notice in evidence the defendant in error objected:

> "First. That it does not comply with section 3611 of the Political Code in this: That it fails to show that a well-defined crevice of valuable deposits has been discovered; and that it shows that one well-defined wall has been discovered.
>
> "Second. That it does not comply with section 3612 of the Political Code in this: Under subdivision 4 of said section in failing to state the general course of the work as near as may be; under subdivision 6 of said section, in failing totally to describe the discovery shaft or its equivalent, or the discovery work done upon the claim; under subdivision 7 of said section in failing to properly describe the corners or the markings thereon; in describing a blazed tree; and not a blazed tree in place; in describing the same corner as a post and as a blazed tree; in failing to state that the post was the size or character required by law, or that they were of the lawful size; in failing to state that the posts were surrounded by monuments of stone or earth as by law required; in failing to give such a description of the markings of each corner as would identify the said corners. That this declaratory statement is not verified as required by section 3612 of the Political Code, in this respect: That it is not verified as to what the size, character or dimensions of the discovery work was; that it is not verified in so far as describing the corners is concerned."

The trial court took the matter under advisement, and subsequently announced its rulings as follows:

> "The location notice offered in evidence is not in certain particulars in accordance with the present statute requirements: The defendant cannot claim title to the premises in controversy after having located the Keyno in the manner indicated by the notice of location or declaratory statement, which it is required shall be filed with the county clerk and must contain certain verified statements, and as the notice sought to be introduced is lacking, the court will sustain the objection to its introduction.
>
> "It may be that, if prior to the commencement of this trial, an amended declaratory statement showing the facts necessary, was made and filed in the office of the recorder such amended statement might have been offered in evidence; that is merely a suggestion however."

To the ruling of the court the plaintiff in error excepted (p. 49).

This is the record made up in the trial court.

In the specifications of error which were brought to the supreme court of the State we find the following under the designation of VI:

> "The court erred in refusing to admit in evidence the notice of location of the Keyno Quartz Lode mining claim, offered in evidence by the defendant and objected to by the plaintiff, which said notice of location is in words and figures, as follows:
>
> "(This notice of location will be found hereinbefore in this record at page 36.)"

The record then goes on to state what objections were urged by defendant in error to the introduction of the notice. The objections are not fully set forth in this specification, but some, at least, of the objections are correctly stated. The specification, however, was complete and sufficient when it called attention to the ruling complained of. The fact that

the objections which were made and sustained are not fully set forth can make no difference. The question for determination before the court was as to the sufficiency of the location notice, and if it was sufficient it should have been admitted in evidence, regardless of the grounds of the objection. In other words, it is not the place of a specification to state objections which have been sustained, and should it undertake to do so, it is surplusage and should have no consideration.

But, even should it be held otherwise, the objection is, so far as it goes, correctly stated, and under such statement there is sufficient to present the Federal question which we shall submit under the second subdivision of this brief.

To show that this question was raised and insisted upon in the supreme court of the State as a Federal question by plaintiff in error, we copy from its brief in the State supreme court, as follows:

> "When the defendant offered its location notice of the Keyno in evidence the court excluded it. Under this subdivision comes up for discussion the same questions raised in paragraph 2 last preceding. Our location notice was objected to in that it did not comply with the provisions of sec. 3612 Political Code. We do not intend to argue opposite sides of the same proposition of law in one brief, and therefore under this subdivision we will simply state that we raise this question at this time because we believe it is a Federal question, upon which, if this judgment should be affirmed, we have the right of appeal to the United States Supreme Court. The Federal question which we suggest is that the provisions of 3612 Political Code, places upon the locator an additional burden not contemplated by the United States statute, and not within the power of the State legislature. If this court adheres to its views expressed in Purdum *vs.* Laddin, it may perhaps sustain the ruling of the lower court in excluding the location notice of our Keyno Lode claim. As we have relied in paragraph 2 last preceding upon what seemed to be an insuffi-

> ciency of plaintiff's location notice, in the light of the decisions of this court in Purdum *vs.* Laddin and cases there quoted, we will leave this specification of error with the statement that if we ever have occasion to appeal from the decision of this court to the United States Supreme Court we wish to make a record that we have presented the point upon this argument."

In the case of Purdum *vs.* Laddin, 23 Mont., 387, referred to in the foregoing quotation, the supreme court of Montana held (we copy the entire syllabus):

> "Political Code, section 3612, providing that the declaratory statement containing a description of a mining claim filed with the county clerk must contain the location and description of each corner, with the markings thereon, is mandatory, and a compliance with its provisions is necessary to perfect a valid location, hence a statement describing a claim by metes and bounds, and giving no description of the corners or the markings thereon, is invalid."

As further showing that the question was not only presented, but actually decided by the supreme court of the State, we copy that part of the opinion of the supreme court of the State which is returned to this court with the writ of error, as follows:

> "The next error alleged is that 'the court erred in excluding the location of the defendant's Keyno claim.' We have examined this notice of location, and are satisfied that it does not conform to the statute of the State of Montana, or with the construction thereof by this court in the case of Purdum *vs.* Laddin, 23 Mont., 387; 50 Pac., 153: The question as to the right of the legislature to provide rules for the marking of the boundaries of mining claims, and providing for a record of such location, and what the recorded paper must contain, has so long been recognized in this State, and has so many times been approved by this court, that it would be useless to enter

> again into any consideration of the questions so decided. We are satisfied, therefore, that the court did not err in excluding the location notice of the Keyno claim."

This is the complete record as it is shown. We have not undertaken to show under this head that the question involved is a Federal question, but simply that it was insisted upon as a Federal question, and was considered as such, and that if it is a Federal question it was presented and is presented as completely and sufficiently (not to say ably) as it is possible to present such a question.

From the origin of the litigation to the present time the plaintiff in error has, without ceasing, insisted that its location notice was good under the congressional law, and that the State could not impose upon it such conditions as are imposed by this decision. That the matter was not argued more extensively is owing to the fact that the supreme court of the State, in the case of Purdum vs. Laddin, had, before the decision in this case, foreclosed the question so far as the State was concerned. We had nothing else to do but preserve the question for this court. We submit that has been properly done.

II.

Is the question presented a Federal question?

Under this head we shall briefly discuss:

1st. May Congress delegate the authority to a State to prescribe the requisites of location records?

2d. If so, was such authority ever delegated?

3d. If such authority was delegated, does not the act of the State, the agent, become the act of the principal, the Federal Government, and is not the act to be construed finally by this court?

In this brief upon the motion to dismiss the appeal we do not propose to enter upon a full discussion of these important questions. We shall attempt to present enough to satisfy, we trust, the court in concluding that there is sufficient in the question to warrant a hearing, and that the case should not be summarily disposed of upon the application to dismiss.

1st. *Can Congress delegate to a State the authority to legislate upon the sufficiency of records of locations of mining claïms, that being one of the steps in the disposition of the public lands?*

The question here presented is one that has been agitated almost continually in Montana since the enactment of the mineral laws. Upon various occasions the question has arisen before the supreme court of the State in one manner or another, and that tribunal has held that the law delegating such authority was authorized. The court at first had but little hesitancy in giving force to the State statute, which prescribed certain requisites for mining locations, and particularly that requirement prescribing an affidavit to the notice of location.

In a very recent case, however, the supreme court of the State, while sustaining the validity of the statute of the State, expresses very grave doubt as to the correctness of its decision. In referring to its previous decisions, where they were all cited and reviewed, the court says:

> "We cannot say that we have an 'abiding conviction' that these decisions are erroneous, but at most only that we have serious doubts as to their correctness." * * *
>
> "We therefore, while entertaining very serious doubts as to the correctness of this court's past rulings, in consideration of the circumstances above set forth, must refuse to declare the legislative action of the State of Montana unconstitutional."

Mares *vs.* Dillon, 75 Pacific Reporter, 963, decided by the supreme court of Montana, March 21, 1904.

The identical question was presented and decided in that case as in the one at bar, and was presented in almost identically the same manner, viz., as to the validity of a location notice of a mining claim.

The case of Mares *vs.* Dillon has been taken to this court upon a writ of error, and is now pending herein as Dillon *vs.* Mares, No. 693. The plaintiff in error in that case has printed and filed in this court an exhaustive brief upon the merits, upon the question of the authority of Congress to delegate to a State the right to legislate upon any matter relating to the disposition of the public lands. Upon this motion to dismiss the appeal we do not feel called upon to go fully into this important question upon the merits, but content ourselves by calling the attention of the court to the state of the record and the uncertainty by which the question is at present surrounded. We have had the privilege of examining the brief of the plaintiff in error in the case of Dillon *vs.* Mares, which is now on file in this court, and have been accorded the privilege of citing this court to it, in case the court should feel inclined to enter upon an investigation of the merits of the question, upon the motion to dismiss. This we do, not only in support of our own interest, but out of deference to the plaintiff in error in that case, whose rights might be concluded by a dismissal of this cause.

Briefly stated, our contention is that the right of disposal of the public domain is vested by section 3, article IV, of the Constitution in Congress alone. This legislative right being so vested in Congress cannot be by it delegated to the State, but is a power that must be exercised by Congress directly and alone. Any attempt to delegate it would be a nullity and beyond the constitutional power of Congress. Any assumption of such power by the State, whether under a grant or delegation from Congress or by mere assumption by the

State, would likewise be a nullity and an attempt by the State to act beyond any possible authority.

The law of the State regulating the location of mining claims, which is the disposition of the public domain, is unconstitutional and beyond its reserved or granted powers. As we shall hereafter show, the State of Montana by the act in question, and particularly as construed by the supreme court of the State, has undertaken by legislation to control in the most minute details, and in the most unreasonable and unnecessary manner, the location of mineral lands, and by so doing has to all intents and purposes nullified the acts of Congress. It has put restrictions on the act which sets at naught the liberal character of the act and requires useless and harassing details to be set forth in the record of the claim, which under the act of Congress are not required and are unessentials under any considerations of the matter. By thus doing the State undertakes to control the disposition of these lands, or if it does not control such disposition its act becomes a serious hindrance and obstacle to the application of the congressional act which undertakes to make such disposition.

Upon this application to dismiss the appeal, we shall not enter upon any further discussion of the right of Congress to delegate to the State this authority. The question presented, viz., the power of the disposition of the public lands being in Congress, the inability of Congress to delegate that power; the consequent unconstitutionality of any act of the State attempting to control such disposition, and also the authorities bearing upon these questions, are discussed in the brief in Dillon *vs.* Mares, to which we ask the court's attention without incorporating the same in this brief, should the court feel, upon this motion to dismiss, that it should require a more full investigation of these questions.

2d. *Has Congress ever delegated, or attempted to delegate, to the State the authority claimed to have been exercised?*

Conceding for the sake of argument that Congress might delegate to the State authority to control or regulate the record of mining claim locations, and what may or must be therein contained, the next question for consideration is, Has Congress actually conferred such power?

This whole case turned on the sufficiency of a location notice under which the plaintiff in error claims to have acquired a right in certain mining property. It was contended by the defendant in error, and held by the court, that the location notice having failed to describe the discovery shaft of the claim, and having failed to incorporate in the notice for record certain inscriptions on the corner or boundary posts, as required by the Montana law, that the plaintiff in error's attempted location became absolutely void, and that no proof could be received of his appropriation, although such proof might show a complete compliance with every requirement of congressional or State law in every other respect. Has Congress ever conferred or attempted to confer upon the State power to enact any such law? We think not.

So far as we are aware, the only authority attempted to be conferred by Congress at all, with reference to the location or recording of mining claims, is found in section 2324 of the Revised Statutes. This reads as follows:

> "SEC. 2324. The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: the location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and

such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim."

It will be observed that the authority here conferred is to "the miners of each mining district." Whether Congress has the right to confer the authority upon the miners, we cannot stop to inquire; but there is certainly not conferred upon the State, either expressly or impliedly, any authority to regulate or prescribe the requisites of the location or record of a mining claim. The power which the State has attempted to exercise is important and seriously affects the Government's grant. We think it is quite well established that Congress could not expressly confer the power. How much less, then, can the State assume it without an express and explicit grant.

It will, of course, be contended that there is an implied authority given wherein it is provided that the miner's regulations must not be "in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated." The most that can be claimed by this provision is that it restricts the miners. It does not pretend to confer any rights of legislation upon the State. When it is so well established by unbroken authority that the right of legislation vested in a political body cannot be by that body delegated, it would be a most illogical conclusion to say that such a right had been delegated in so equivocal a manner. The State certainly stands without any pretense of express authority. We submit that it would be a far call to find in this statute an implied authority.

Without conceding the power of Congress to confer upon the miners the authority designated in the act of Congress, it seems to us that the evident purpose of the act was to confer upon the miners and not upon the State certain specified rights or powers of regulation. These regulations must not be in conflict with the laws of the United States; nor must they be in conflict with the laws of the State. Here must be

interpolated into the statute a clause or provision that such regulations must not be in conflict with the laws of the State "governing the location, manner of recording, and amount of work necessary to hold possession of a mining claim." Such is not the expression of the act. It simply declares that the miners shall not make regulations in conflict with the laws of the State. Not necessarily with reference to location, recording, and assessment work, but upon any rightful subject of legislation. For instance, it might be imagined that the State might make laws controlling the formation of districts, the place where records should be kept, and when made and how preserved, and their evidentiary effect, and the like. These might be subjects of rightful legislation in the State, and yet not trench upon the powers granted by Congress to the miners. We do not care, however, to be understood as admitting such to be the case.

We submit that, in view of the lack of power in Congress to give to the State the authority attempted to be exercised, it is entirely admissible to hold that Congress intended to subject the miners to only such laws as the State could rightfully enact, and not to expressly confer upon the State authority to regulate the disposal of the public lands of the Federal Government.

In the brief of defendant in error reliance is placed on the case of Erhardt *vs.* Boaro, 113 U. S., 527, as an authority to the effect that the State may legislate upon these subjects. It is true in that case this court did discuss the Colorado statute as if it were effective and treated it as if it were legislation authorized by Congress.

But in that case there was no discussion of the power of the State to enact such a law. The authority of the State was assumed as a matter of course, and there was no contention to the contrary.

We therefore submit that the State was not authorized to pass a law defining the requisites of a record of mining claims; that such authority is vested only in the miners.

3d. *If Congress did delegate the authority to the State, the act of the State, the agent, becomes the act of the National Government, the principal, and is to be finally construed by this court.*

This proposition seems too plain to be disputed. We cannot conceive that it is possible that Congress can delegate its powers; but if it can, the laws of agency must apply, and the State's action must become the action of the Federal Government, its principal; otherwise the State may control, as we shall see, in the disposition of the public lands, which is a congressional right only, and the supreme court of the State may construe finally the State laws in such a manner as to divest the National Government of its entire authority.

We therefore submit that if the State's authority in this matter is to be upheld, that the act of the State, its statute, is subject to a final review by this court, and that review must be assumed for two reasons: 1st. Because the act is the act of Congress through its agencies; and, 2d. This court must look to it that the acts of Congress, the supreme law in this matter, are not nullified or qualified by the statutes of the State. For, conceding the right of the State to act under authority of Congress, the act or statute must be in conformity with the letter and spirit of the congressional act and not in conflict with it.

We are confident that the State statute, with the construction put upon it by the State supreme court, is in direct conflict with the congressional act, and to that extent certainly void. If the State has a right to enact the statute, its construction is with this court; and if it is, we submit that the construction put upon the statute by the supreme court of the State is not correct, and that such construction unreasonably interferes with the disposition of the mineral lands, and is against the liberal spirit of Congress in enacting the mineral law, and that this court will overrule the supreme court of the State and put a liberal construction upon the State

statute, to the end that it will not stand in conflict with the letter nor repugnant to the spirit of the act of Congress.

Section 2324, from which we have before quoted, expressly provides that the right of regulation shall be subject to the following requirements:

> "The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim located, by reference to some natural object or permanent monument as will identify the claim."

The Montana statute undertook to supplement this by the enactment of section 3612 of the Political Code, which reads as follows:

> "Within ninety days of the date of posting the location notice upon the claim, there must be filed in the office of the county clerk of the county in which the lode or claim is situated, a declaratory statement which must contain:
>
> "1. The name of the lode or claim.
>
> "2. The name of the locator or locators.
>
> "3. The date of location, and such description of the location of said claim with reference to some natural object or permanent monument as will identify the claim.
>
> "4. If a lode claim, the number of linear feet claimed in length along the course of the vein each way from the point of discovery, with the width on each side of the center of the vein, and the general course of the lode or vein as near as may be.
>
> "5. If a placer or mill-site claim, the number of acres or superficial feet claimed.
>
> "6. The dimensions and location of the discovery shaft, or its equivalent, sunk upon lode or place claims.
>
> "7. The location and description of each corner with the markings thereon.
>
> "Such declaratory statement must be verified by

the oath of the locator, or one of the locators, and in case of a corporation, by an officer thereof duly authorized to act."

The second and third subdivisions only are in accord with the congressional act. The 1st, 4th, 5th, 6th, and 7th subdivisions require matters in addition to that of the laws of Congress. It will be observed that the 6th and 7th subdivisions require that the record shall contain the dimensions and location of the discovery shaft and the location and description of each corner with the markings thereon.

The question arose in the present case as follows: The defendant below and plaintiff in error here proved by witnesses the discovery of a mineral vein upon the premises, and the marking of the boundaries so that they could be readily traced upon the ground, and the posting of the notice upon the ground. In short, the proof showed a full compliance with the Federal statute in making the location up to the recording of the claim. Then was offered in evidence the record of the claim, and thereupon it was objected that the location notice did not conform to the requirements of the Montana statute, in that it did not give the dimensions of the discovery shaft or the size or markings of the corner posts. Numerous other objections were made, but these are the objections which were sustained. The court, as we have before shown, held the objections good and excluded the location notice, thus effectively disposing of defendant's (plaintiff in error's) claim to the ground.

The supreme court of the State in the case of Purdum *vs.* Laddin, 23 Mont., 387, and in the present case, held these requirements of the statute to be mandatory, and unless they should be compiled with the attempted location should be held void.

It cannot be disputed that everything which could have been done to perfect a location had been done. At least there was sufficient evidence to go to the jury. The court held

that these facts could not go to the jury for the reason that certain other things had not been incorporated in the notice of location, and therefore held the location void.

The locator performed every act required by the act of Congress; he made a record within time, containing every statement required by the congressional law; the names of the locators, the date of the location, and a description of the claim with reference to such natural objects and permanent monuments as would identify it. And yet, because he failed to give the dimensions of the discovery shaft—an unimportant matter—and to give the markings upon the stakes, which defined the boundaries of the claim (also absolutely unimportant facts under any view of the matter), it was held that proof could not be received of his appropriation.

That the discovery shaft was sufficient, and that the markings on the stakes were all that the law required, makes no difference, so the court holds. These descriptive matters must be incorporated in a record before they can be proved.

The statute, as construed by the State supreme court, in effect says:

A compliance with all requirements of the United States law is not sufficient to establish a location; the record, when made, must not only contain all that the laws of Congress require, but it must contain minute evidence of the size of the discovery shaft (which should be held immaterial), and the very markings on the boundary stakes (which are not only immaterial, but may be untrue and misleading).

Had the record of location declared that certain markings were upon these boundary stakes, the notice must have been held sufficient in itself, and the facts submitted to a jury, although there might have been no truth whatever in the statement of record. How inconsistent it seems to say that though every fact may have been sufficient, the locator shall lose his rights because he did not put of record an immaterial fact. The law as construed makes the merest techni-

cality substantial and declares the most substantial things to be of no value.

After requiring all these things to be incorporated in the notice of location, the record thereof is not even made *prima facie* evidence of the facts therein stated. Had such effect been given the record, there might be some reason for such requirements. Then it could be held that the record, in the absence of a compliance, should lose its *prima facie* evidentiary character; but as the law has been construed the omission is held to be fatal to the location.

Such a construction practically interferes with the power of Congress in the disposition of the soil. If the State has authority to make regulations governing the records in such cases, that means that it may *within reason* exercise such power. It does not mean that it may impose foolish and useless restrictions. As well might the State require a chemical analysis of the ores, or the width of the vein, or the character of the country rock to be set forth in the location notice. All of these things are usually proved upon every trial involving the validity of the location, but they are not absolute essentials and certainly have no place in the record. We submit that the law which requires such unessential things to be recorded, as this law does, is unreasonable and a serious and useless restriction and imposition upon the locator who has complied with the mineral requirements of the United States statute.

This case is not unlike that in which a State law might prescribe that every deed executed should contain minute description of the monuments with the inscription thereon. As between parties to a deed, where the statute had not been literally complied with, would the deed be held void? Is not a location a grant from the Government to the locator? Can it be destroyed for such trivial causes? In other words, would not and ought not such requirements to be held directory? Which means that they are not and were never intended to be essentials.

If they are not essentials and serve no reasonable purpose, has the State the power to impose them upon the locator? Are they not an undue and useless interference on the part of the State with the grant made by the Government to the locator? Do they not conflict with the laws of Congress and with the broad spirit which ought to and always has prevailed in the construction of this congressional act?

Mr. Lindley, in the second edition of his work on mines, at section 381, discusses the liberal construction of the congressional law and the actions of the locators thereunder as laid down by all the courts, as follows:

> "In the initiation of rights upon public mineral lands, as well as in the various steps taken by the miner to perfect his location, his proceedings are to be regarded with indulgence, and the notices required invariably receive at the hands of the courts a liberal construction. The mining laws are 'to be expounded with as little differentiation as may be between former known actual customs of miners and the formulated expressions of Congress based upon those customs in present positive law.'
>
> "'The courts always construe these notices liberally and if by any intendment the proof can be reconciled and made consistent with the statement contained in them, the jury will be allowed to say whether or not, upon the whole proof, the identification is sufficient.'
>
> "To hold the locator to absolute technical strictness in all the minor details, would be practically to defeat the manifest end and object of the law. The pioneer prospector, as a rule, is neither a lawyer nor a surveyor. Neither mathematical precision as to measurement, nor technical accuracy of expression in the preparation of the notices is either contemplated or required. The law being designed for the encouragement and benefit of the miners should be liberally interpreted, looking to 'substance, rather than shadow, and should be administered on the lines of obvious common sense.' Mere imperfections in the certificate will not render it void.

"As was said by the supreme court of Utah:

"'If by reasonable construction, in view of the surrounding circumstances, the language employed in the description will impart notice to subsequent locators, it is sufficient.'

"In matters of description, calls that are erroneous will not destroy the validity of the notices or certificate, if by excluding them a sufficient description remain to enable its application to be ascertained.

"Thus, where a certificate of a location specified its *situs* as being in the wrong county, it being otherwise valid, and have been recorded in the right county, the erroneous statement was mere surplusage, and as such was rejected.

"In the absence of a local requirement to that effect, the certificate need not state either the district, county, or State in which the location is situated.

"And where a State statute requires two notices, one preliminary, and the other final, if the former contained the name of the county, and the final one omitted it, but refers to the preliminary notice, the defect is cured.

"The position of the monuments as built upon the ground may be described in such a way as to direction as to be confusing. But if the other statutory requirements were complied with the notice would be sufficiently correct to allow its admission in evidence.

"A mistake in the certificate as to the direction and course, such as 'northerly' instead of 'northeasterly,' the description being aided by monuments on the ground, is of no moment.

"The certificate is not required to show the precise boundaries of the claim as marked on the ground, but it is sufficient if it contains directions, which, taken in connection with such boundaries, will enable a person of reasonable intelligence to find the claim and trace the lines.

"The object of any notice at all, being to guide the subsequent locator, and afford him information as to the extent of the claim, of the prior locator, whatever does this fairly and reasonably should be held to be a good notice. Great injustice would follow, if, years after a miner had located a claim, and taken posses-

> sion, and worked upon it in good faith, his notice of location were to be subject to any very nice criticism."

How in conflict with these broad principles is the State law under discussion.

In note 2 to this section, at page 701, the author notices the case of Purdum *vs.* Laddin, 23 Mont., 387, and says: "The adoption in Montana of a more exacting law (Pol. Code of 1895, sec. 3612) has rendered the earlier Montana cases inapplicable in that State." In other words, a State statute makes it necessary to put a harsh construction upon this beneficent act. In itself it was liberal and liberally construed. The State statute necessitates a hard and harsh construction. The purpose of the act has been overthrown and its character destroyed by a State law. This means that the State law is invalid, as being in conflict with the superior law, the statutes of Congress.

If the law means what the supreme court of Montana says it does, it is clearly in conflict with the spirit, and letter too, of the mining laws of the General Government, and, we submit, should be so held.

In no State, so far as we know, have such restrictive laws been passed as in Montana, and we submit that any such tendency should be checked. It is against the liberal spirit of the national law, and if permitted to proceed will eventually hedge that law in with impossible conditions. Records are intended for notice only, and when a record contains those requirements prescribed by the laws of Congress, it gives all the notice necessary. At most, the "manner" of recording is all that has been delegated either to the State or to the miners. The contents of the notice should be left where the laws of Congress fix them.

The defendant in error thinks the law of the State should be sustained because it goes only to the manner of proving facts in the State court, and as establishing a rule of evidence. As has been before pointed out, this is not the effect

of the law. The record prescribed by the State law when made is valueless as evidence. No presumption attaches to the statements contained in the record. Under the law, the record serves only as notice, and in all controversies the facts must be proved as other facts are proved.

Without at present going further into the matter, we submit that the court should hear the parties upon the questions here presented, and that the motion to dismiss the writ of error should be denied.

Reply of Plaintiff in Error to Suggestion of Diminution of Record.

We have also been served by counsel for defendant in error with a suggestion of a diminution of the record filed in this court in this cause by adding thereto certain portions of the brief filed by plaintiff in error in the supreme court of Montana.

While we have endeavored to furnish this court with a full and complete record in this cause, and have no objections, if this court shall deem the matter material, to adding all or any portions of the briefs used in the court below, still we respectfully submit that a complete record has been filed, and that any additions as suggested would simply uselessly encumber the record.

The printed record herein contains the complete record presented to and upon which the supreme court of Montana acted in rendering the judgment appealed from herein, and the opinion and decision of that court. The assignment of errors presented to the supreme court of Montana shows (printed Record, p. 47, assignment VI) that the question raised in this court was presented to the supreme court of Montana as a Federal question, and the opinion and decision of that court (printed Record, pp. 56–57) clearly show that court so treated and disposed of the questions. The printed brief or argument presented to the supreme court of

Montana certainly is not a part of the record to be considered by this court, any more than the oral argument made in the court below. The record clearly shows that plaintiff in error contended in the supreme court of Montana that the State statute was in contravention of and in conflict with the Federal statutes, and while the question was also clearly and properly raised in our brief in the court below, we submit that it must be presumed that the question was properly before the lower court, because it considered and passed upon the same.

We further respectfully submit that the suggestion of diminution of the record should be denied, for the reason that counsel for defendant in error have simply filed a bare suggestion of diminution, and have failed to make therewith any showing whatever that the matter which they desire added is in any way material to the consideration of the cause by this court.

We respectfully submit that the motion for diminution should be denied.

W. W. Dixon,
Of Butte, Montana, Solicitor and of Counsel for Plaintiff in Error.

Forbis & Evans,
Of Butte, Montana, of Counsel.